

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

VIRGINIA OCCUPATIONAL SAFETY AND HEALTH (VOSH) PROGRAM



MEDIA PACKET

Virginia State Plan for Occupational Safety and Health

The Commonwealth of Virginia's Department of Labor and Industry administers the Virginia State Plan for Occupational Safety and Health (VOSH) under grants from the Occupational Safety and Health Administration (OSHA), U. S. Department of Labor (USDOL). State Plans are authorized under §18 of the Occupational Safety and Health Act of 1970 (OSH Act), 29 USC 651, et.seq.

Grants to states are authorized under §23(g) for compliance programs in the private and public sectors as well as onsite consultation for public sector with funding of 50% from the federal government and 50% from the Commonwealth. Section 21(d) of the OSH Act provides grants for free private sector consultation to small employers with funding of 90% from the federal government and 10% from the Commonwealth.

Section 18(e) of the OSH Act provides that a State Plan may seek "final approval" of the program so that the state can assume exclusive jurisdiction over most aspects of OSH Act jurisdiction. The VOSH program has received final approval of its program from OSHA.

Important Dates

Initial State Plan Approval: September 28, 1976

Program Certification Date: August 15, 1984

Final Approval Date: November 30, 1988

VOSH Budget

Federal Fiscal Year (September-October): FFY 2016 23(g) \$7,842,600 (50% federal - 50% state funds)

Federal Fiscal Year (September-October): FFY 2016 21(d) \$1,223,667 (90% federal - 10% state funds)

TOTAL FFY 2016: \$9,066,267

VOSH Coverage

The role of the VOSH Program is to enforce safety and health regulations for general industry, construction, agricultural, and state and local government maritime employers in Virginia. The VOSH Program covers both state and local government and private sector employers and workers in Virginia. VOSH does not cover certain federal enclaves (e.g., military reservations) and the U. S. Postal Service.

In addition, certain industries are exempted from OSHA coverage nationwide by §4(b)(1) of the OSH Act where another federal agency exercises statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health (e.g., the Nuclear Regulatory Commission, Federal Railroad Administration, United States Coast Guard, Federal Aviation Administration, Mine Safety and Health Administration, etc.).

VOSH conducts safety and health inspections in response to accidents, complaints, referrals, and randomly scheduled inspections of high hazard industries. In addition to enforcement efforts, VOSH provides compliance assistance through targeted outreach, education, and training to emphasize increased awareness on the part of both employers and workers of the importance of a safety and health culture.

The VOSH Program mirrors the federal program in many areas but has adopted some different statutes, regulations, policies and procedures to address unique characteristics of the Commonwealth.

Profile of the Virginia State Plan

PROFILE OF THE VIRGINIA STATE PLAN (FY 2016)		
Designee	C. Ray Davenport, Commissioner Virginia Department of Labor and Industry Main Street Centre 600 East Main Street, Suite 207 Richmond, Virginia 23219-4101	
Initial Approval	September 28, 1976	
Plan Certification	August 15, 1984	
Final Approval	November 30, 1988	
FY 2016 23(g) Funding	Federal	\$3,921,300
	State	\$3,921,300
	TOTAL	\$7,842,600
Source of State Funding	General fund and non-general fund	
Compliance Officers	Allocated Positions	38 safety/19.88 health
	On-Board as of July 1, 2016	31 safety/14.88 health
State and Local Government Consultants	Allocated Positions	.20 safety/1.60 health
	On-Board as of July 1, 2016	.20 safety/.30 health
Compliance Assistance	Allocated Positions	7.0 CAS
	On-Board as of July 1, 2016	1.0 CAS
Covered Workers	3.8 million	
Covered Establishments	258,000	
Coverage	State and local government and private sector workplaces within the state, with the exception of federal workers, the United States Postal Service, private sector maritime, federal military facilities, and other federal enclaves where the state has ceded coverage to the federal government.	

VOSH Laws and Regulations

The VOSH Program administers occupational safety and health activities in the Commonwealth through the Virginia State Plan agreement with federal OSHA as required by Va. Code §40.1-1. The VOSH program is required by the OSH Act to be “at least as effective as” federal OSHA (29 USC 667(c)) and is monitored by OSHA on an annual basis. Financial audits occur every two to three years. In accordance with §40.1-22, the Virginia Safety and Health Codes Board is charged with adopting occupational safety and health standards and regulations applicable to Virginia employers.

The majority of VOSH laws and regulations are identical to OSHA. However, VOSH has enacted unique laws and regulations covering overhead high voltage line safety; tree trimming operations; fall

protection in steel erection; reverse signal operation in construction and general industry; compliance with manufacturer's instruction for vehicles, machinery, tools and equipment in general industry, construction, maritime and agriculture; and confined spaces in the telecommunication industry.

VOSH also has an abatement verification regulation that requires not only abatement certification (i.e., the employer's signed statement that abatement has occurred), but also requires employers to provide photographs, receipts, purchase orders, etc., as verification that a hazard was abated.

Demographic Profile

Under Virginia's State Plan, VOSH has jurisdiction over approximately 3.8 million workers in over 258,000 establishments in covered industries:

Virginia Employment by Major NAICS ¹ Division, Fourth Quarter of 2015		
NAICS Industry Sector	NAICS Codes	Average Establishments
Accommodation and Food Services	72	16926
Administrative and Support and Waste Management	56	13318
Agriculture, Forestry, Fishing and Hunting	11	1734
Arts, Entertainment, and Recreation	71	3226
Construction	23	21458
Educational Services	61	3773
Finance and Insurance	52	11664
Health Care and Social Assistance	62	40907
Information	51	4180
Management of Companies and Enterprises	55	2278
Manufacturing	31-33	6236
Mining, Quarrying, and Oil and Gas Extraction	21	332
Other Services (except Public Administration)	81	26541
Professional, Scientific, and Technical Services	54	40490
Public Administration	92	4049
Real Estate and Rental and Leasing	53	9366
Retail Trade	44-45	26394
Transportation and Warehousing	48-49	6261
Unclassified Establishments	99	7036
Utilities	22	504
Wholesale Trade	42	11615
Total, All Industries	00	258,288

Source: Virginia Employment Commission Quarterly Census of Employment and Wages (QCEW)

Agency Programs

Compliance

VOSH consists of two major units: compliance and cooperative programs. The compliance unit inspects places of work; issues citations, penalties, and abatement dates for violations of established occupational standards; and responds to fatalities, accidents, and worker complaints about workplace safety and health hazards.

¹ North American Industrial Classification System

Scheduling of inspections is accomplished through an administrative plan, which prioritizes our inspections as follows:

- imminent danger situations;
- fatality/accident inspections;
- employee complaints or referrals from a knowledgeable source; and
- programmed/planned inspections.

Programmed/planned inspections consist of General Schedule and Special Emphasis inspections.

General Schedule inspections are initiated from a list of high hazard industries in a random manner and are conducted only when there are no higher priority inspections available. The VOSH Program has a General Schedule for the Manufacturing Industry and Construction.

Special Emphasis inspection programs are developed either by the VOSH² program or federal OSHA³ and are designed to address employers in industries with high rates of injuries or illnesses or a specific safety or health hazard with identified high hazard working conditions.

Violations and Penalties⁴

Type of Violation	Minimum Penalty	Maximum Penalty
Serious	\$300	\$7,000
Willful	\$5,000	\$70,000
Repeat	N/A	\$70,000
Failure-to-abate	N/A	\$7,000 per day
Other-than-serious	N/A	\$7,000

In assessing penalties, VOSH is required to consider “the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations”, Va. Code §40.1-49.4.A.4.(a).

VOSH also has maximum fine of \$70,000 and/or imprisonment for not more than six months for any willful violation found to cause the death of an employee for the first such conviction – the punishments double for a second conviction (§40.1-49.4.K). Individuals whose flagrant, culpable and wanton violation of VOSH laws and regulations results in the death of an employee may also be subject to a charge of manslaughter.

Employers may contest citations, penalties and order of abatement issued as the result of a VOSH inspection or investigation. Employers are not required to abate violations that have been contested until the contest is resolved through settlement or litigation. Employees may contest the order of abatement. The notice of contest must be mailed or delivered by hand within fifteen days from the

² Local (Virginia) Emphasis Programs: First Report of Injuries and Illnesses; Fall Hazards; Trenching and Excavation; Scaffolding; Public Sector Workshops; Logging and Sawmill Industries; Reverse Signal Operation of Vehicles, Machinery, Equipment, and Heavy Equipment; Overhead High Voltage Line Safety; Tree Trimming Operations; Asbestos; and Wastewater and Water Treatment Facilities

³ National Emphasis Programs: Primary Metal Industries; Amputations; Combustible Dust; Crystalline Silica; Process Safety Management Covered Chemical Facilities; Isocyanates; Lead; Facilities That Manufacture Food Flavorings Containing Diacetyl; and Hexavalent Chromium

⁴ State and local government employers are not currently subject to penalties. However, the Virginia General Assembly has authorized the Virginia Safety and Health Codes Board to consider adoption of penalties for such entities. It is anticipated that the Board will take up consideration of a proposed regulation in 2016. Va. Code §40.1-2.1, effective July 1, 2016.

receipt of the citation, proposed penalty or order of abatement. Upon receipt of a notice of contest, the Commissioner will attempt to resolve the matter by settlement, either by participation in an informal conference or through a formal settlement process.

If the matter is not settled or it is determined a settlement is not probable, the Commissioner will initiate judicial proceedings by referring the contested issues to the appropriate Commonwealth attorney. Virginia does not use an administrative law judge and review commission system to handle litigated cases. Virginia is unique among State Plans in using local circuit courts and prosecutors (Commonwealth Attorneys) to litigate contested cases. Attorneys assigned to VOSH's Division of Legal Support have been approved by the Office of the Attorney General to represent VOSH in litigation when they are appointed by the local Commonwealth's attorney and the Circuit Court judge on a case-by-case basis. Circuit court decisions at trial are appealable to the Virginia Court of Appeals.

Whistleblower/Anti-discrimination protections are afforded to employees who engage in activities protected by Virginia occupational safety and health laws and regulations (e.g., filing an employee complaint regarding safety or health hazards in the workplace, participating in a VOSH inspection, etc.). Va. Code §§40.1-51.2:1 and -51.2:2. The VOSH Office of Whistleblower Protection (OWP) conducts investigations of employee complaints of discrimination.

Inspection Statistics

CATEGORIES OCCUPATIONAL SAFETY AND HEALTH INSPECTIONS						
Calendar Year	2013		2014		2015	
	Safety	Health	Safety	Health	Safety	Health
Planned	1,450	352	1,340	337	1,416	329
Follow-Up	34	11	38	8	45	9
Complaint	202	215	232	230	249	195
Referral	76	71	67	77	162	65
Accident/Fatality/Cat.	49	4	50	6	42	8
Other	340	76	280	71	35	2
Totals	2,151	729	2,007	729	2,061	656

CATEGORIES CITATIONS ISSUED						
Calendar Year	2013		2014		2015	
	Safety	Health	Safety	Health	Safety	Health
Serious	2,136	839	1,834	694	2,128	1,498
Willful	34	7	4	2	14	0
Repeat	84	1	76	13	49	6
Other (OTS&FTA)	719	445	689	471	484	875
Total	2,973	1,292	2,612	1,180	2,675	2,379

CATEGORIES PENALTIES ASSESSED (IN DOLLARS)						
Calendar Year	2013		2014		2015	
	Safety	Health	Safety	Health	Safety	Health
Penalties	\$1,690,724	\$708,987	\$1,493,765	\$525,346	\$1,761,969.50	\$1,004,151.32

Cooperative Programs

VOSH cooperative programs provide assistance to Virginia's state and local government and private sector employers to voluntarily comply with applicable requirements without the issuance of citations and penalties.

The VOSH consultation program provides free on-site surveys and technical assistance to Virginia small businesses in high-hazard industries, and to state and local government employers under the State Plan 21(d) grant. http://www.doli.virginia.gov/vosh_coop/vosh_consultation_p1.html



VOSH has two safety and health management system programs designed primarily for small businesses and larger employers respectively.

The Safety and Health Achievement Recognition Program (SHARP) recognizes small, high-hazard businesses of 250 or fewer employees that have developed and implemented exemplary safety and health management systems. Virginia SHARP sites regularly maintain injury and illness rates 60% or more below the national average for their respective industries. **As of July, 2016, there were 19 active SHARP sites with another 17 pursuing SHARP status.** Visit the SHARP site for more information on the SHARP program at http://www.doli.virginia.gov/vosh_coop/vosh_sharp_p1.html.

The Virginia Voluntary Protection Program (VPP) recognizes and promotes exceptional safety and health management systems. In VPP management and labor establish a cooperative relationship at a general industry, construction or public sector workplace to develop and implement an exceptional safety and health program. VPP STAR sites, the highest level of recognition, regularly maintain injury and illness rates 60% or more below the national average for their respective industries. **As of July, 2016, there were 45 VPP sites in Virginia.** Visit the VPP site for more information on the VPP Program at http://www.doli.virginia.gov/vosh_coop/vosh_vpp.html.

Current Virginia VPP Sites:

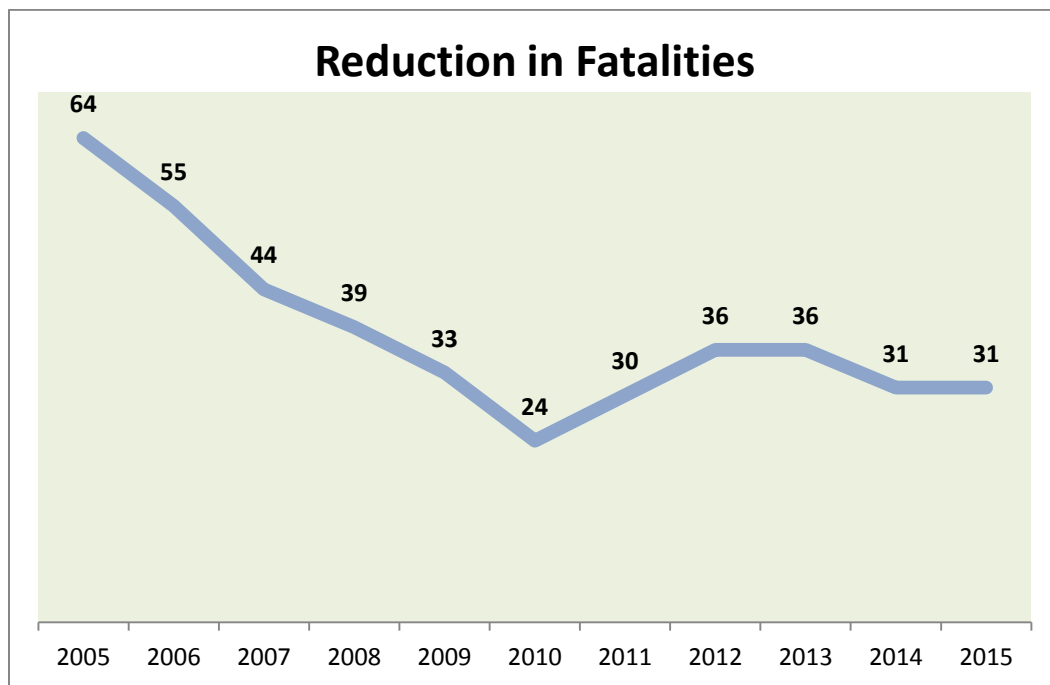


Accomplishments

The VOSH program strives to maintain equally strong enforcement and cooperative program elements; and has accomplished many important achievements that benefit Virginia's employees and employers:

- ✚ Virginia's injury and illness rates are consistently well below the national average in both private and public sector employment. Bureau of Labor Statistics (BLS) data from the Survey of Occupational Injuries and Illnesses (SOII) for 2014 reflects an overall Total Recordable Case (TRC) Rate for Virginia of 3.0. When compared to the national rate of 3.4, the result is a difference of 11.8%. This rate is for all industries, including state and local government.
- ✚ The private industry TRC rate for Virginia is 2.7. When compared to the national rate of 3.2, the result is a difference of 15.6%.
- ✚ The manufacturing industry TRC rate for Virginia is 3.8. When compared to the national rate of 4.0, the result is a difference of 5.0%.
- ✚ The construction industry TRC rate for Virginia is 2.8. When compared to the national rate of 3.6, the result is a difference of 22.2%.
- ✚ The state and local government TRC rate for Virginia is 4.2. When compared to the national rate of 5.0, the result is a difference of 16.0%.

- ✚ A 52% reduction in fatal accidents covered by VOSH jurisdiction from calendar years 2005 to 2015:



- ✚ Census of Fatal Occupational Injuries (CFOI) data that indicate that occupational fatalities in Virginia have decreased substantially since 2012:

2014: 116

2013: 128

2012: 149

- ✚ A national top eight ranking in the rate of state occupational safety and health inspections per number of employers.⁵
- ✚ Development of public service announcement (PSA) videos in the areas of tree trimming operations, overhead high voltage line safety, trenching safety, the dangers of heat stress and fall protection.
- ✚ The scheduling of regular Virginia Voluntary Protection Program (VPP) Best Practices training days provided free of charge to VPP members, prospective applicants and state and local government employers. VPP Best Practices days were hosted by Norfolk State University, R. R. Donnelly (machine guarding), Sysco (Poultry Processing) during FFY 2016. VOSH videotapes the presentations/PowerPoints and is working on a technology solution that will make the training materials available to a much wider audience through enhancements to the www.doli.virginia.gov website.
- ✚ An exemplary and unique Apprenticeship Program for VOSH Compliance Safety and Health Officers (CSHO), Industrial Hygienists and Safety and Health Consultants. The Apprenticeship Program has approval through the U. S. Department of Veteran's Affairs and the Virginia Department of Veteran's Services as an authorizing agency for benefits under the Montgomery and Webb GI Bills.

⁵ <http://www.aflcio.org/Issues/Job-Safety/Death-on-the-Job-Report>

- ✚ A thriving Virginia Voluntary Protection Program (VPP) which recognized four new VPP STAR and one MERIT sites for a total of 45 active members in FFY 2015 (a 2.3% increase over FFY 2014):

NIBCO, Inc. – Salem, VA

Johns Manville – Richmond, VA

Cintas Location #385 – Culpeper, VA

Raytheon – Dulles, VA

Tecton (MERIT) – Salem, VA

- ✚ A statute that recognizes the Virginia Voluntary Protection Program and requires the Virginia Safety and Health Codes Board to enact regulations for the operation of VPP in Virginia, Va. Code §40.1-49.13. Governor Terry McAuliffe proposed the legislation that codified the Virginia Voluntary Protection Program (SB 881 and HB 1768). The legislation passed unanimously. Governor McAuliffe held a bill signing ceremony on June 4, 2015. The Virginia Safety and Health Codes Board is currently developing a regulation to implement the statute.
- ✚ An improving Safety and Health Achievement and Recognition Program (SHARP) with 19 active members and 17 sites that are pursuing SHARP status.
- ✚ An annual safety and health conference which is now entering its 21st successful year of outreach to hundreds of employees, employers, unions, associations and government agencies.